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An Open Letter to the Commissioners of San Juan County, the Animas River Stakeholders Group, and the People of San Juan County from Todd Hennis

November 11, 2010

Dear Friends,

I am writing to express my strong opposition to the Environmental Protection Agency's plan to designate Upper Cement Creek as a Superfund site. Not only does this plan directly conflict with the EPA's agreement not to declare any part of the Animas River Basin a Superfund site provided a stakeholder's group was created and worked to improve water quality, but history shows that Superfund designation destroys communities. For these reasons, I urge:

- the San Juan County Commissioners to create a resolution stating they are opposed to the creation of Superfund sites anywhere in the County
- all members of the Animas Stakeholders Group engage in the Group with the same level of energy they had when the Group first started
- the State of Colorado and the EPA implement the only real technical solution to the mine pool problem by removing the third bulk head of the American Tunnel, thereby: removing all the new discharges that have occurred since 2000, lowering the mine pool, and allowing the water to be treated from this single source, and to do this in a way that strengthens the San Juan County community rather than destroying it.

The fact is that the EPA's proposed project will be paid for by all past and present landowners in the Superfund area, not by the EPA, even though these landowners are not responsible for creating the problems being targeted.

PAST AND PRESENT DISCUSSIONS WITH THE EPA REGARDING SUPERFUND SITES IN SAN JUAN COUNTY

In the early 1990s, the Environmental Protection Agency came to the people and landowners of San Juan County and said they did not want to repeat the mistakes of the Leadville Superfund experience. Toward that end, they said if the people of San Juan County formed a stakeholders group of all concerned parties, and if that stakeholders group worked to improve water quality over time, the E.P.A. would create no Superfund sites in the area.

Because of this, many of us formed the Animas River Stakeholders Group. We worked on projects to improve water quality. And we continue to do water cleanup projects to this day.

Therefore, it was with great surprise that I read the following from the Animas River Stakeholders Group October Meeting Summary:

"EPA Sampling: There was some discussion of EPA's intensive water and soil sampling slated for the next two weeks in Cement Creek. Bill reviewed the sample and analysis plan and made a few suggestions. There were some

questions as to how this sampling effort would help with the overall analysis of what is going on in Cement Creek and some questions about how the samples were to be taken and if that created some type of bias. This sampling effort is tied to scoring upper Cement Creek to see if it might potentially qualify for an NPL listing under CERCLA."

"NPL listing under CERCLA" is Superfund. For sixteen years the Stakeholders Group has been living up to it's part of the agreement with the EPA, and now the EPA is breaking its promise to the people of San Juan County.

SUPERFUND DESIGNATION DESTROYS COMMUNITIES

History shows that Superfund designation is the single most devastating event that can occur to a community short of it being wiped out by tornado, and the experiences of Lake County, Colorado and the Silver Valley, Idaho tell the tale.

In the case of Lake County, one only has to drive through downtown Leadville and observe economic conditions to see what a Superfund designation does to a community. That's why the County Commissioners of Lake County have been campaigning for years to get the EPA out of their community.

In the case of the Silver Valley, David Bond, a former reporter, has written many times about the EPA's destruction of the local economy, including writing the following this year:

"I think 26 years of holding the Silver Valley's mining economy and its good name hostage is enough! And you want another hundred years? You're out of your collective mind. I was there at the first "Superfund" meeting as a reporter for the Spokesman-Review, when Ian von Lindern made everyone in the room gasp when he said it might take as much as \$75 million to clean up the Bunker Hill site. You've gone through at least 6 times that already and now you want another BILLION?

Ian was right about one thing, though, when he said you could hold everyone from Noah Kellogg's descendants' on down hostage for the cleanup money. While you lazily watched, you allowed the real culprit, Gulf Resources & Chemical Corp., skedaddle out of the country with almost a BILLION in today's dollars scott-free that could have paid for cleanup and pensions. But now you're shaking down mom-and-pop companies that never turned a spade of earth for everything they've got! Shame on you. It was your screw-up, not theirs."

In light of these cases and others like them, we need to assume that San Juan County will go the way of Leadville and Silver Valley unless we stand up for ourselves now. There's no time to wait.

IN LEADVILLE, THE EPA HAS PROVEN ITSELF TO BE INEPT, SELF SERVING, AND NOT TO BE TRUSTED

In 2003 the EPA told the people of Leadville that they planned to remove thousands of tons of highly reactive dump materials from the Ponsardine Mine, and on the face of it, the plan sounded fine. What the EPA didn't say was that they planned on dumping the materials down the New Mikado Mine Shaft. Yet that is what they did in 2005 even though the Shaft is on private property and directly connected to the Leadville Mine Drainage Tunnel. In other words, the E.P.A. formed a perfect leaching column of highly reactive material which immediately reported to the Leadville Mine Drainage Tunnel. When the management of the wastewater treatment plant at the mouth of the Tunnel complained about large increases in zinc and cadmium levels, the manager who exposed the EPA's actions was demoted and removed from

the site. If anyone other than the EPA had dumped the material down the New Mikado Shaft, they would be serving twenty years in a Federal penitentiary.

Further, in 2010, the EPA went onto the Mikado site again without the property owner's permission, this time to evaluate the work required to seal off the Mine's dumps as the EPA's "solution" to the problem they created.. Following their site visit they stealthily held a public meeting announcing their plan knowing full well that their past attempts to seal off the Mikado dumps had been successfully deflected by historic preservationists. The fact is that the dumps represent an economic resource for the community due to their high silver content (\$15 million at today's prices), and until the day they are reprocessed they serve as an historic site. Naturally, due to the previous environmental damage to the property by the EPA, the property owner has formally informed the EPA they do not have permission to go onto the site, and he has instructed the Sheriff of Lake County to arrest any further EPA trespass. In spite of that, the EPA is moving ahead with the engineering work required to execute their plan.

In other words, in Leadville, the EPA has shown that it is inept, self serving, and not to be trusted, and San Juan County should learn from the Leadville example. Once the EPA enters your community, they show complete disregard for personal property rights, and they never leave.

THE PROBLEM WATER IN CEMENT CREEK IS COMING FROM THE SUNNYSIDE MINE POOL, AND THE EPA, THE STATE, AND THE COORDINATOR OF THE STAKEHOLDERS GROUP HAVE ALLOWED IT TO FLOW UNCHECKED FOR 10 YEARS

It is common knowledge that the problem water in Cement Creek comes from the Sunnyside Mine Pool even though the EPA, the State of Colorado, and the Coordinator of the Stakeholders' Group deny it. As one San Juan County elected official said about the bulkheads installed to contain the Mine Pool's drainage, "Everyone knew the mine pool would come out of everywhere else once it was created. It doesn't take a rocket scientist to know that."

The EPA, the State, and the Coordinator of the Stakeholders' Group have had numerous occasions to press for resolution of the problem at the source and to hold the responsible company accountable. However, they have chosen to let the company off the hook, and they have let the polluting process persist for 10 years. Specifically:

The EPA had an opportunity to join in a lawsuit to force the responsible party to lower the mine pool to end discharges from neighboring parties, but they refused. They also refused to pressure the State to enforce the Clean Water Act against the offending company, and they turned down an offer to use a local water treatment plant's settling ponds to treat the American Tunnel discharge.

The State of Colorado Water Control Division refused to enforce the Consent Decree entered into by the responsible company requiring the company to remediate all new leaks and seeps that occurred after the Mine Pool was created. The Colorado State Attorney General then released the company from the Consent Decree in exchange for four small remediation projects, three of which directly benefited the company itself. He also forever waived the State of Colorado's rights to enforce the Clean Water Act against the company and returned a to them \$5 million environmental bond. Finally, the State also turned down a separate offer to use a local water treatment plant's settling ponds to treat the American Tunnel discharge.

The Animas River Stakeholders Group's Coordinator told a journalist "After the Sunnyside bulkheads were put in, both the Mogul and the Gold King mines started discharging more water,"

notes...the groups coordinator. "But it would be silly to say that's from the mine pool. We don't know that." (The full article can be found at <http://www.westword.com/2005-09-01/news/what-lies-beneath/>) Since the Coordinator had done hundreds of thousands of dollars of contracting work for the company in the years preceding the shutdown of the Mine, his view of his client's liability is clearly muddied by this conflict of interest. For many years he prevented any meaningful discussion of the Sunnyside Mine Pool problem at stakeholders meetings. Most recently, the group claimed that the subtle chemical differences in the water from the Mine Pool compared to the water being discharged elsewhere showed there was no connection between the Pool and the discharges. Yet anyone who knows anything about groundwater knows that water travelling along a vein or through fissures will be chemically altered along the way. In fact, even in the Pool itself, different lobes in that large body of water are bound to have different chemistries depending on the mineralization in the immediate area.

The mystery is why these people have repeatedly stood in the way of proper clean up efforts, and we may never truly know. What we should count on though is that they won't accept responsibility for their actions unless we force the issue, and even worse, they will do everything they can to make us pay for their mistakes.

THOSE WHO ARE TRULY RESPONSIBLE FOR THE PROBLEM WILL NOT PAY FOR THE SUPERFUND PROJECT. RATHER ALL PAST AND PRESENT PROPERTY OWNERS IN UPPER CEMENT CREEK WILL PAY FOR IT.

The people who are pushing for National Priority Listing (Superfund) for North Cement Creek should be aware of the following:

- 1) The Superfund program has no money
- 2) The Statute of Limitations on the Mine Pool has probably run out, and cost recovery from the large company responsible for the problem will never happen (much as David Bond writes above).
- 3) The E.P.A. would be its own "Potentially Responsible Party" along with the State of Colorado.
- 4) The E.P.A. has demonstrated a nearly complete waste of CERCLA funds expended on the mine pool problem to date (such as spending \$650,000 to design a high density sludge treatment plant when the technology was outmoded and unsuitable for the location. The EPA ordered the contracted engineering company not to consider any other plant designs).

Neither the EPA nor the responsible company will pay for the Superfund project. Rather all past and present property owners in Upper Cement Creek will pay for it, and we already know the EPA can't be counted on to create sensible plans and to spend available funds responsibly. Why would they after all? It wouldn't be their money they were spending.

THE STAKEHOLDERS' GROUP NO LONGER REPRESENTS THE PEOPLE OR LANDOWNERS OF SAN JUAN COUNTY, BECAUSE TOO MANY VOLUNTEER MEMBERS HAVE STOPPED ATTENDING

The sad fact is that the Animas River Stakeholders' Group does not represent the people or landowners of San Juan County. This group originally had a large participation by a diverse group of interests. Yet, after

sixteen years, the few (sometimes seven or eight) people attending the meetings are predominantly government employees or employees of environmental groups that get paid for their time to attend the meeting and get their travel expenses reimbursed. In my case, for example, attendance requires 700 miles of driving (round trip) and two days of time. So, unless I know something incredibly important like a potential Superfund designation is to be discussed I don't go. The environmental groups and the EPA know this, and count on meeting fatigue and finances to wear down any opposition to their ultimate plans. The fact that the group has perverted its original goal of keeping San Juan County from being the victim of a Superfund designation is probably the worst aspect of the group right now.

We all need to re-engage to continue the Group's good work while also protecting our rights and our lands. In addition, the Group needs to purchase a high quality conference phone, so those of us who can't always make the meetings in person can at least participate remotely.

THE EPA, THE STATE OF COLORADO, AND THE STAKEHOLDERS GROUP COORDINATOR ALLOWED THE PROBLEM TO PERSIST, AND NOW THEY'RE TRYING TO COVER THEIR TRACKS AT OUR EXPENSE

The E.P.A., the State of Colorado, and the Stakeholders Group Coordinator could have prevented the environmental damage done by the creation and continued existence of the Sunnyside Mine Pool. Instead, they not only chose for years to deny that there was a problem, but they actively did things to let the company that created the Pool escape the consequences of their actions. To now attempt to pass the problem on to the surrounding landowners and San Juan County through the creation of a Superfund area and to dodge their own responsibilities in this matter is wrong. San Juan County's best hope for a healthy economic future is mining. Part of the EPA's purpose in pushing for a Superfund designation is to permanently close area mines by bulk heading, and we know all too well that bulk heading only moves the drainage to new outlets. This game of 'whack a mole' will keep the EPA employed for many years while bankrupting innocent landowners in the process.

THE ONLY SOLUTION IS TO REMOVE THE BULKHEAD ON THE AMERICAN TUNNEL AND TO TREAT THE WATER PROPERLY IN ONE PLACE

Removing the third bulkhead on the American Tunnel, lowering the Sunnyside Mine Pool, and treating the water in one place is the solution. Then all the other discharges will go away, and the heavy metals in the water can be reliably removed. Until the E.P.A. comes to the table with this as a solution and gives up their Superfund plans, they really don't deserve to be at the table.

IN SUMMARY

Superfund designation destroys communities. To defend ourselves from going the ways of Leadville, Silver Valley and other such places, I urge the San Juan County Commissioners to create a resolution stating they are opposed to the creation of Superfund sites anywhere in the County and Upper Cement Creek in particular, and that all members of the Animas River Stakeholders Group re-engage with the same level of energy and commitment they displayed when the Group was first started. I also urge the EPA and the State of Colorado to contain the problem and clean it up properly at its source. We can not afford to let the EPA's Superfund plan proceed.

For The Gladstone Institute, Inc.

Respectfully,
Todd C. Hennis, Pres.